

PUBLIC UTILITY COMMISSION OF TEXAS

REQUEST FOR PROPOSALS

**TO ADMINISTER THE
TEXAS UNIVERSAL SERVICE FUND**

Authorized by

Texas Utilities Code, Section 56.023(d)



**Public Utility Commission of Texas
William B. Travis Building
1701 North Congress Ave.
Austin, Texas 78711**

Closing Time and Date – 2pm, Central Time

April 6, 2015

**Project No. 44230
RFP Number 473-15-00317
NIGP CLASS ITEM
961-96**

TABLE OF CONTENTS

<u>SECTION</u>	<u>TITLE</u>	<u>PAGE</u>
1	INTRODUCTION	3
2	ELIGIBLE PROPOSERS	3
3	AUTHORITY	3
4	ANTICIPATED SCHEDULE OF ACTIVITIES	4
5	COMPENSATION	4
6	QUESTIONS	4-5
7	PROPOSAL REQUIREMENTS	5-6
8	PROPOSAL CONTENTS	6-9
9	CONDITIONS	9-10
10	SOLE POINT OF CONTACT	10
11	SELECTION CRITERIA	10
12	REVIEW OF PROPOSALS	10-11
13	CONTRACT TERM	11
14	TEXAS PUBLIC INFORMATION ACT	11
<u>ATTACHMENTS</u>	<u>TITLE</u>	
A	STATEMENT OF WORK	12-17
B	SAMPLE CONTRACT TERMS	18-29
C	HUB SUBCONTRACTING PLAN INFORMATION	30

PUBLIC UTILITY COMMISSION OF TEXAS
REQUEST FOR PROPOSALS NO. 473-15-00317

FOR A CONTRACTOR TO ADMINISTER THE
TEXAS UNIVERSAL SERVICE FUND

SECTION 1 – INTRODUCTION

The Public Utility Commission of Texas (PUCT) is issuing a Request for Proposals (RFP) to administer the Texas Universal Service Fund (TUSF). The Statement of Work (Attachment A) contains detailed information concerning the administrator’s responsibilities.

In 1987, the Texas Legislature established a universal service fund and authorized the PUCT to adopt and enforce rules regarding administration of the fund. The purpose of the TUSF is to implement a competitively neutral mechanism that enables all Texas residents to obtain basic telecommunications services needed to communicate with other residents, businesses, and governmental entities. The TUSF is a multi-million dollar fund collected and disbursed by the TUSF administrator under the direction of the PUCT. The TUSF is funded by a statewide uniform charge or assessment rate payable by telecommunications providers, *i.e.* local, long distance, and wireless carriers, that have access to the customer base. The telecommunications service providers pay into the fund on a monthly basis. The fund supports programs designed to provide universal service throughout the state of Texas: a high cost rural program, a tele-assistance program, the Lifeline program, relay telecommunications service, and the specialized telecommunications assistance program. In addition, the fund reimburses certain state agencies charged with the implementation of programs supported by the TUSF. Funds are disbursed by the TUSF administrator to eligible recipients on a monthly schedule.

The TUSF data is currently maintained in a relational database structure implemented in the Microsoft SQLServer RDBMS. The structure supports two aspects of the data, account data and transactional data. The account data aspect contains data for each company (e.g., company name, address and general information). The transactional aspect contains the data submitted to the administrator on the worksheets that is not already held in the account data (e.g., revenue, assessments, support payments, etc).

For further clarification of the TUSF and for additional details of the requirements of the TUSF Administrator please refer to PUCT Substantive Rules Subchapter P Texas Universal Service Fund <http://www.puc.texas.gov/agency/rulesnlaws/subrules/telecom/Telecom.aspx> and Public Utility Regulatory Act (PURA) Subtitle C, Chapter 56 Telecommunications Assistance and Universal Service Fund <http://www.puc.texas.gov/agency/rulesnlaws/statutes/Pura13.pdf>.

SECTION 2 – ELIGIBLE PROPOSERS

Proposers **must** have a minimum of five (5) years’ experience managing similar projects of a similar size and scope as described in the Statement of Work (SOW), Attachment A. An entity or company in existence for fewer than five years is eligible to submit a proposal if key personnel on the proposal team (including subcontractors) have the minimum required experience. Proposers who do not meet this requirement are not eligible for award.

The PUCT encourages Historically Underutilized Businesses (HUBs) to compete for this award.

SECTION 3 – AUTHORITY

This Request for Proposals is issued pursuant to the PUCT’s authority under Texas Utilities Code, Sections 56.023(d).

SECTION 4 – ANTICIPATED SCHEDULE OF ACTIVITIES

RFP Release	March 6, 2015
Proposers Conference (Required)	March 16, 2015
Notices of Intent to Submit a Proposal	March 20, 2015
Last day to submit written question(s) regarding the RFP	March 20, 2015
Deadline for submission of proposals	April 6, 2015
Post-proposal interviews or presentations, if required	April 14, 2015
Staff Recommendation for selection	April 17, 2015
Selection approved	April 2015
Contract negotiations (If new contractor)	April/May, 2015 Contract execution June 1, 2015
Contract execution (If incumbent contractor)	September 1, 2015

Questions submitted to the PUCT will be answered within two business days after receipt and answers to all questions will be provided through an Addendum, posted on the ESBD

Disclaimer: Dates are subject to change at the PUCT's discretion

REQUIRED BIDDERS CONFERENCE

The PUCT will consider only the proposals of entities that attend the Proposer's Conference on **March 16, 2015**. The proposer's conference on March 16, 2015 will start at 10 a.m. at the PUCT headquarters located in the William B. Travis Building at 1701 N. Congress Ave., Austin, Texas 78701 on the 8th floor. The conference will be held in 8 Central. Please check in at the receptionist area first on the 7th floor. The bid conference is scheduled to last no more than 2 hours. The conference is open to anyone wishing to bid on this proposal. Due to size constraints, please limit attendees to no more than 3 individuals and they should be employees of the company, not lobbyists. The conference is intended to review the RFP and answer any questions that have not been previously answered relating to the RFP. Teleconferencing will not be permitted.

SECTION 5 – COMPENSATION

Proposal shall contain a price proposal for performing the requested services as outlined in Attachment A (Statement of Work). Proposers should provide as much information as possible. Proposers are free to structure the price proposal as they see fit. The PUCT requires the proposers to demonstrate how elements of the price correspond to elements of the proposed work plan. The proposed compensation shall include all anticipated expenses, including travel. Unless otherwise approved in writing by the PUCT, payments will be made based on the invoicing and payment terms of the resulting contract.

SECTION 6 – QUESTIONS

The PUCT will accept **only written** questions and requests for clarification by mail, fax, or e-mail to the attention of the personnel below. Inquiries and comments must reference RFP No. 473-15-00317.

Direct questions about the RFP to:

Erica Duque, CTPM, CTCM
Fiscal Division
Public Utility Commission of Texas

P.O. Box 13326
Austin, TX 78711-3326

Fax: (512) 936-7058

Purchasing@puc.texas.gov

Please Note: Mrs. Duque is the only permitted point of contact. Contact or attempted contact with other PUCT employees, including Commissioners and their staffs, may result in a proposer's immediate disqualification.

The PUCT will post additional information, responses to written questions, RFP modifications, and addenda on the PUCT website and the Electronic State Business Daily (ESBD). It is the responsibility of interested parties to periodically check the ESBD and PUCT's website for updates to the procurement prior to submitting a bid. The Respondent's failure to periodically check the ESBD and the PUCT's website will in no way release the selected vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFP.

<http://www.puc.texas.gov/agency/about/procurement/Default.aspx>

<http://esbd.cpa.state.tx.us/>

Proposers should check both websites often to ensure they have the most current information.

SECTION 7 – PROPOSAL REQUIREMENTS

Proposers must file their sealed proposals in Project No. 44230 at PUCT Central Records before April 6, 2015, 2:00 p.m., CT. Proposals submitted in response to this request must meet all requirements in this RFP to be considered for selection. Fax or email proposals will not be accepted under any circumstances.

The PUCT's Central Records Division is open to the public for filing Monday through Friday from 9:00 a.m. to 5:00 p.m. CT, excluding holidays. Central Records is also closed every Friday from 12 noon to 1 p.m. unless there is an Open Meeting of the Commission that day. Proposals will not be considered if received in the Central Records Division after 2:00 p.m. CT on the closing date.

Delivery Address

Central Records Division
Room 8-100
William B. Travis Building
1701 North Congress
Austin, Texas 78701

Mailing Address

Central Records Division
Project No. 44230
Public Utility Commission of Texas
P.O. Box 13326
Austin, TX 78711-3326

Please Note: The PUCT WILL NOT accept a U.S. Postal Service postmark, round validation stamp, mail receipt with the date of mailing stamped by the U.S. Postal Service, a dated shipping label, invoice or receipt from a commercial carrier, or any other documentation as proof of timely submission of any proposal. The PUCT assumes no responsibility, under any circumstances, for the receipt of a proposal after the deadline time and date established in this RFP.

The PUCT will accept ONLY the time/date stamp of its Central Records Division as evidence of timely submission.

7.1 Number and Appearance

The proposal submission shall include an information sheet that clearly states the name of the proposer; the name, address, and telephone number of the proposer's point of contact, the project number; and the RFP title and number. The information sheet is the first page before the sealed proposal submission. Upon receipt of proposals, the PUCT will file the information sheets in Project No. 44230. All parts of the proposal after the information sheet shall be submitted in an envelope or other sealed container that is marked with the proposer's name and "Project No. 44230: CONFIDENTIAL."

Proposers shall submit one (1) clearly marked "Original" of their proposal response with original signature and five (5) identical copies of their proposal. Proposers shall also submit one (1) electronic copy of the complete RFP response on a compact disk or memory stick (flash drive) in Microsoft Word.

Proposals shall be written only on 8 ½" x 11" white paper using double or 1.5 spacing, and 12-point or larger Times New Roman font.

Proposals shall include all required attachments and certifications. The PUCT will not accept attachments and certifications submitted after the deadline. Failure to provide all required information shall make the proposal non-responsive and thus disqualified from consideration.

Proposals shall be bound in a three-ring binder.

Proposers shall not use the state seal or the PUCT seal in or on the proposal.

Proposals shall be free of any extrinsic items.

Proposals are limited to 75 pages, including all attachments and certifications, but excluding section tabs or dividers. Proposals longer than 75 pages may be subject to immediate rejection without review. Evaluation team members will not read past the 75th page.

SECTION 8 – PROPOSAL CONTENTS

Proposals shall include the contents outlined below. Mark each section with an index tab. Within each section, pages shall be consecutively numbered. The PUCT may reject a proposal that fails to include required contents.

8.1 Statement of the Requirements

Each proposer must state succinctly its understanding of this RFP's requirements and describe how it would perform the tasks in the Statement of Work (Attachment A). Each proposal must include a work plan of proposed activities and events. This should include proposed initial start-up time, timeline, scope and tasks. If a proposer believes there are additional tasks needed to accomplish the PUCT's goals, identify them, explain why they are needed, and how the proposer would perform them.

8.2 Competence and Knowledge

Each proposer must demonstrate the competence and knowledge to fulfill the requirements identified in Attachment A. The proposer should also describe any prior experience in managing similar programs, especially for utilities or governmental organizations. The proposer should describe the processes and procedures it intends to use to provide these services and an organizational chart identifying the functions and reporting relationships of the personnel who would be assigned to this work.

8.3 Qualifications

For each person a proposer identifies to perform the work described in this RFP, provide a detailed resume that describes the services they would perform, their qualifications, and their experience.

8.4 Compensation

Each proposal shall propose a pricing structure to provide the services identified in Attachment A. If a proposer believes that additional work is required to meet the PUCT's goals, the proposer should identify the additional work and the associated price to accomplish that work. The PUCT requires the proposers to demonstrate how elements of the price correspond to elements of the proposed work plan.

Please note: The proposed fee structure must include all anticipated expenses. The PUCT will not reimburse any out-of-pocket expenses or expenses not contemplated at the time of contract execution. The winning bidder will be expected to meet with the Contract Manager twice per year.

8.5 Financial Capability

Proposers shall describe the financial capability of the person or entity to complete the work required and to sustain its operations. Acceptable evidence of financial capability includes a recent audited financial statement from a certified public accountant, a compiled financial report, or a statement from a certified public accountant or banker.

Please note: The winning proposer will be required to acquire and post a \$2,000,000.00 performance bond or letter of credit to remain active throughout the entire contract. All costs associated with the performance bond are the responsibility of the contractor.

8.6 References

Each proposer shall provide at least three references, including contact information. The PUCT prefers references from clients for whom the proposer has performed similar work, including other state commissions or boards. Do not use the PUCT or any individuals employed by the Commission as a reference. Any negative responses received may be grounds for disqualification of the proposal.

8.7 Statement on Potential Conflicts of Interest and Prohibited Relationships

Proposers must be neutral and impartial, must not advocate specific positions to the PUCT, and must not have a direct financial interest in the provision of electric, telephone, water or sewer service in the state of Texas. Proposers must identify any personal or business relationships with any electric, telecommunications, water or sewer utility or utility affiliate operating in Texas or any company participating in, or having a pending application at the PUCT to enter, the Texas retail electric market, telecommunications market, or water or sewer utility market. Proposers must identify the extent, nature, and time aspects of those relationships. Entities having a conflict of interest, as determined by the PUCT, will not be eligible for contract award.

If a proposer does not have any known or potential conflict of interest, the proposal must include such a statement. Failure to provide either a statement describing potential conflicts of interest or a statement that no potential conflicts exist shall automatically disqualify the proposer. This statement shall be signed before a notary public by the highest-ranking officer of proposer's entity having responsibility for vetting corporate conflicts of interest, e.g. a corporate Executive Vice President rather than the head of an operating or regional unit of the firm. If the circumstances described by a proposer change or additional information is obtained subsequent to submission of proposals, the proposer must supplement its response under this provision as soon as reasonably possible upon learning of any change to their affirmation.

The PUCT will determine whether a conflict of interest or the perception of a conflict of interest exists from the perspective of a reasonable person uninvolved in the matters covered by the resulting contract. The PUCT is the sole arbiter of whether a conflict or the appearance of a conflict of interests exists. The PUCT encourages proposers to provide complete disclosure of matters that might be considered a conflict of interest. Completeness of disclosure may be a factor in evaluating proposals.

Each proposer also should address how the proposer intends to ensure that no interest arising or

potentially arising as a result of its activities or those of its parent, affiliate, or other related entity shall conflict with proposer's duty should it be selected to provide these services.

Each proposer shall identify its lobbyists registered with the Texas Ethics Commission and their compensation and shall include a statement of what involvement, if any, the lobbyists shall have in connection with (1) this engagement and (2) electric utility, telecommunication utility, or water and/or sewer utility legislation and policy.

The PUCT may not enter into a contract with a person who was a PUCT commissioner or executive director within the past 24 months, nor any person who has been employed by the PUCT within the past 12 months. Persons who have been employed by the PUCT or by another state agency in Texas more than 12 months but fewer than 24 months ago shall disclose in the proposal the nature of previous employment with the state agency and the date the employment ended.

8.8 Historically Underutilized Business Certification and Required HUB Subcontracting Plan

If the proposer is HUB certified by the Texas Comptroller of Public Accounts or the former Texas Building and Procurement Commission, now known as the Texas Procurement and Support Services Division (TPASS), the proposer shall submit a copy of its HUB certificate.

In accordance with Texas Government Code Section 2161.252, the PUCT has determined that subcontracting opportunities are probable under this contract. Therefore, proposers, including State of Texas certified Historically Underutilized Businesses (HUBs), must complete and submit a State of Texas HUB Subcontracting Plan (HSP) with their solicitation response if the total dollar amount of the proposal response is greater than \$100,000. Proposers must complete and submit their signed HUB Subcontracting Plan (HSP) with their solicitation response.

Note: Responses that do not include a complete HSP shall be rejected pursuant to Texas Government Code Section 2161.252(b). See Attachment C.

8.9 Required Certifications

Proposals must contain a signed statement certifying that:

- A. All statements and information prepared and submitted in response to the RFP are current, complete and accurate;
- B. The proposer has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this proposal;
- C. The proposer is not currently delinquent in the payment of any franchise tax owed the State of Texas;
- D. The proposer has not, nor has the firm, corporation, partnership, or institution represented by the proposer, or anyone acting for such a firm, corporation, partnership or institution, (i) violated the antitrust laws of this state or federal antitrust laws, or (ii) communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business pursuant to 15 U.S.C. Section 1, et seq. and Texas Business & Commerce Code Section 15.01, et seq.;
- E. The proposer has not received compensation from the PUCT, or any agent, employee, or person acting on the PUCT's behalf for participation in the preparation of this proposal pursuant to Texas Government Code § 2155.004(a);
- F. The proposer is in compliance with Texas Government Code Section 669.003, relating to contracting with the current or former executive head of a state agency. If the proposer is a current or former executive head of a state agency or employs a current or former head of a state agency, the proposer shall provide (1) the executive's name; (2) the name of the state agency; (3) date of separation from the state agency; (4) current position with employer; and (5) date

employment with proposer began;

- G. The proposer is not ineligible for contract award under Texas Government Code Section 2155.006 and acknowledges that any contract may be terminated and payment withheld if this certification is inaccurate; and
- H. The proposer played no part in the development or drafting of this RFP.
- I. If a Texas address is shown as the address of the proposer, proposer qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20, or proposer has included in the proposal a statement that proposer does not qualify as a Texas Resident Bidder.

8.10 Other

If incorporated in Texas, proposer shall attach to the proposal a current franchise tax Certificate of Good Standing, issued by the Texas State Comptroller's office.

If incorporated in Texas, proposer shall also provide to PUCT the corporation's charter number issued by the Texas Secretary of State's office.

Proposer shall provide its 9-digit Federal Employer's Identification Number (EIN) or 5-digit State of Texas Vendor's Identification Number (VIN).

Pursuant to Texas Family Code Section 231.006, proposer shall include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25% of the business entity submitting the bid or application.

SECTION 9 – CONDITIONS

All proposals and copies of proposals become the property of the PUCT upon receipt.

The PUCT reserves the right to amend or cancel this RFP at any time. After the proposal due date, amendments to the RFP shall be sent only to Respondents who submitted a proposal.

Neither the PUCT nor the State of Texas shall reimburse any proposer for any costs related to preparing a response to this RFP.

The PUCT reserves the right to reject any and all proposals and to cancel the procurement at any time.

The PUCT may request a best and final offer. The PUCT may request an oral presentation or other additional information from one or more proposers.

The PUCT reserves the right to negotiate all or portions of any proposal tentatively selected for award, including the proposed fee.

Proposers understand and agree that no public disclosures or news releases pertaining to this RFP, subsequent contract, or any results or findings based on information provided or obtained to fulfill the requirements of this RFP or subsequent contract shall be made without prior written approval of the PUCT.

Proposers understand that any proposal may be withdrawn in writing before deadline for receipt of proposals. The PUCT will not return withdrawn proposals.

Proposers further agree that any proposal that is not withdrawn shall constitute an irrevocable offer for a period of 90 days from the RFP closing date to provide the services set forth in Attachment A, or until the PUCT has made a selection.

The PUCT reserves the right to seek proposal clarification from any Respondent to assist in making decisions. Conference calls and/or a meeting and presentation by selected Respondents may be called by the PUCT and held in Austin to obtain further information. Any cost incurred by the Respondent for the meeting and

presentation shall be borne by the Respondent and the presentation shall become the property of the PUCT.

Section 2155.077 of the Texas Government Code provides that a vendor may be barred from participating in state contracts that are subject to Subchapter B, General Purchasing Requirements, Procedures, and Programs including contracts for which purchasing authority is delegated to a state agency. If a proposer is barred from participating in state contracts, its proposal shall be disqualified and shall receive no further consideration.

SECTION 10 – SOLE POINT OF CONTACT

Please note Mrs. Duque is the only permitted point of contact, as referenced in Section 6. Contact or attempted contact with other PUCT employees, including Commissioners and their staffs, may result in a proposer's immediate disqualification.

SECTION 11 – SELECTION CRITERIA

The PUCT shall make the selection and award on the basis of the proposer's demonstrated knowledge, competence, and qualifications to provide the services as indicated in the Table below. The criteria are listed in the order of importance to the PUCT.

- A. Clear Understanding of Statement of Work 35%
 - 1. Proposal Quality
 - 2. Thoroughness of approach
 - 3. Clarity regarding proposal objectives and quality of proposed approach for meeting those objectives
 - 4. Innovation and creativity
- B. Competence and knowledge 35%
 - 1. Demonstrated competence and experience in the provision of similar services
- C. Proposed Compensation 15%
 - 1. Total cost
 - 2. Billing and collection plan for payment
- D. Qualifications 10%
 - 1. Vendor staff experience with the provision of similar services
- E. References 5%

All other factors being equal, preference shall be given to a proposer who is incorporated in Texas, whose principal place of business is in the state, or who has an established physical presence in the state.

SECTION 12 – REVIEW OF PROPOSALS

The PUCT will assemble an evaluation team that will begin proposal evaluation as soon as practicable after the submission deadline. Evaluation team members will score each proposal individually using the criteria stated above. After individual scoring, the evaluation team will meet and discuss the proposals and will make a recommendation for selection or a recommendation to take further action. **No information will be provided to proposers about the status of the proposals while they are under evaluation.**

After the evaluation team ranks each proposal based on individual scores, the evaluation team may pose clarifying questions of, or ask for best and final proposals from, the highest ranking proposals. The

evaluation team may also hold discussion sessions with the highest ranked proposers. The team may rate proposals again following questions, requests for best and final proposals, or oral presentations/discussion sessions.

Final recommendations will be presented to the Executive Director of the Public Utility Commission of Texas. The Executive Director may (1) approve the recommended selection in whole or in part, (2) disapprove the recommendation, or (3) defer action on the selection.

The PUCT will begin contract negotiations shortly after notification. The PUCT's standard contract terms are found in Attachment B. The successful proposer may offer changes to these terms or additional terms in their proposal, but the PUCT may reject them. The parties will negotiate a final schedule for performance that will be incorporated into the final contract.

The PUCT will notify each proposer of the final action taken upon execution of contract with the selected proposer.

SECTION 13 – CONTRACT TERM

It is estimated that the awarded contract will have a term of four (4) years, beginning on September 1, 2015 (if incumbent) and ending August 31, 2019. If a new contractor is chosen to be the TUSF Administrator, the term is estimated to begin June 1, 2015 and end August 31, 2019. There are no extension options available.

SECTION 14 – TEXAS PUBLIC INFORMATION ACT

Following award of a contract, all proposals are public information and subject to release. Some information in proposals may not be subject to release because it is business or financial information or a trade secret. Proposers are advised to consult legal counsel regarding disclosure issues and to take appropriate precautions to safeguard trade secrets and any other proprietary information, including copyrighted information. If a proposer believes that parts of its proposal are confidential, then the proposer **MUST** stamp the term “**CONFIDENTIAL**” in bold on the part(s) of the proposal that the proposer believes to be confidential.

If the PUCT receives a request for any information submitted to the PUCT in connection with this RFP, the PUCT will follow the requirements of the Texas Public Information Act (Texas Government Code Chapter 552) by notifying proposers and the Office of the Attorney General. The PUCT assumes no obligation for asserting legal arguments on behalf of proposers. The PUCT may release parts of proposals that are **not** marked confidential without notifying the proposer.

ATTACHMENT A
STATEMENT OF WORK

The Public Utility Commission of Texas (PUCT) is the official governing agency of the Texas Universal Service Fund; however, it currently delegates the ministerial functions of the TUSF administration to another entity through contractual agreement. The PUCT monitors and supervises the TUSF administrator's activities related to the operation and administration of the TUSF. The TUSF administrator is subject to annual performance audits and financial audits at the PUCT's discretion. Pursuant to Texas Utilities Code § 56.023, the PUCT adopted rules that address the administration of the TUSF. The PUCT reserves the exclusive power to revise rules related to the operation and administration of the TUSF and to monitor and supervise the implementation of its rules.

Proposers should review Texas Utilities Code Chapter 56, Subchapter B, and PUCT Substantive Rule 26.420, which describe requirements of the TUSF administrator and programs that the TUSF administrator will be required to administer. Proposals must reflect a familiarity with Texas Utilities Code Chapter 56, Subchapter B, and PUCT Substantive Rule 26.420 and indicate how proposer will comply with those provisions if chosen as the TUSF administrator.

To fully understand the context of the duties of the TUSF administrator, an understanding of the programs included in the TUSF is essential. Copies of the Public Utility Regulatory Act (PURA), which includes the relevant Utilities Code provisions, and the PUCT Substantive Rules are posted on the PUCT website at www.puc.texas.gov.

In addition to the duties described in Texas Utilities Code Chapter 56, Subchapter B, and PUCT Substantive Rule 26.420, the TUSF Administrator will be responsible for performing other duties as determined by the PUCT. Other activities the TUSF administrator will be expected to perform to carry out its duties include, but are not limited to, the following:

- A. The TUSF administrator must create and maintain databases and record keeping processes and procedures for the TUSF that are separate and distinct from the databases and processes and procedures for any other funds that may be managed by the TUSF administrator.
- B. The TUSF administrator will receive inquiries from legislators, telecommunications providers, the PUCT, the media and the general public. The TUSF administrator must be appropriately staffed to respond to such inquiries in a professional, consistent manner, and in accordance with PUCT directives. The TUSF administrator may respond directly to inquiries from telecommunications providers and STAP vendors to assist them in paying into or receiving funds from the TUSF. The TUSF administrator must refer all other requests from third parties to the PUCT.
- C. The TUSF administrator will keep debt collection activities updated on a monthly basis as authorized by the PUCT.
- D. Undistributed fund monies must be invested in secure short-term instruments designed to minimize risk while providing maximum liquidity and return on investment. The TUSF administrator will be expected to propose investment strategies to the PUCT and manage an investment plan approved by the PUCT. The TUSF administrator must be staffed with one or more persons qualified to propose investment strategies and manage an investment plan.
- E. The TUSF administrator will be required to perform incidental tasks necessary to support administration of the TUSF such as development and maintenance of mailing lists, development and maintenance of procedures manuals, reconciliation of mailing lists, maintenance, testing and upgrades of the computer system, establishment of budgets,

schedules and cost tracking systems.

- F. From time to time, the TUSF administrator will be involved in resolving disputes regarding assessments and disbursements. In this capacity, it will be necessary for the TUSF administrator to either employ alternative dispute resolution techniques such as mediation and arbitration or have access to such expertise.
- G. The TUSF Administrator shall verify that all appropriate information has been provided by each ETP, local exchange company (LEC), other entities or agencies and shall issue disbursements to ETPs, LECs, other entities and agencies within 45 days of the due date of their reports except as otherwise provided.

ADDITIONAL INFORMATION

The current TUSF program is described in Chapter 56 of PURA and consists of the programs described below. Numbers of recipients and amounts of money involved with each program are estimates only and are not intended to bind PUCT. The chosen contractor will be expected to administer programs despite variance in the number or recipients or amount of money involved. PUCT will not be required to change the pricing structure if numbers vary from the estimates.

- A. Texas High Cost Universal Service Plan (THCUSP) (Approximately 20 Recipients & \$11.7 million per month.) PUCT Sub. R. 26.403. Under this section, the administrator is required to calculate and disburse monthly support payments to eligible telecommunications providers (ETPs) qualified to receive funds under the THCUSP. The administrator will receive monthly access line information from each ETP, including the total number of eligible lines for which each ETP seeks TUSF support. Additionally, the administrator will receive reports detailing the rates each ETP is charging for residential and single-line business customers under this section along with a calculation of each ETP's base support, as adjusted. The administrator will make the following adjustments in the determination of the actual support payment each ETP may receive each month: access revenues adjustment (if necessary), decrease payment based upon Federal USF high cost support received. Finally, the administrator will ensure that it receives an annual statement from each ETP that it is qualified to participate in the THCUSP before disbursing funds to the ETP;
- B. Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan (Approximately 61 Recipients & \$8.0 million per month.) PUCT Sub. R. 26.404. The administrator is responsible for computing and distributing monthly support payments to ETPs under the Small and Rural ILEC Universal Service Plan. The monthly support amount for each ETP will be calculated by the administrator by multiplying the per-line amount established by the PUCT times the number of eligible lines for the month. The administrator will receive a monthly report detailing each ETP's number of eligible lines. Additionally, the administrator will receive an annual statement from each ETP that it is qualified to participate in the Small and Rural ILEC Universal Service Plan and will not disburse funds to the ETP until it is received;
- C. Implementation of the Public Utility Regulatory Act §56.025 (Approximately 6Recipients and \$160,000 per month.) PUCT Sub. R. 26.406. The administrator will receive copies of PUCT final orders from incumbent local exchange carriers awarded support under PURA § 56.025 indicating the amount of support granted to the incumbent local exchange carrier under this section. The administrator is responsible for disbursing support payments to eligible incumbent local exchange carriers;
- D. Additional Financial Assistance. (There are no current recipients.) PUCT Sub. R. 26.408.The administrator will receive copies of PUCT final orders from incumbent local exchange carriers awarded additional financial assistance indicating the amount of support granted to the incumbent

local exchange carrier under this section. The administrator is responsible for disbursing support payments to eligible incumbent local exchange carriers;

- E. Universal Service Fund Reimbursement for Certain IntraLATA Service (Approximately 22 Recipients and \$60,000 per month), PUCT Sub. R. 26.410. The TUSF administrator will receive proper backup information to calculate the proper support payments from non-electing chapter 58 companies;
- F. Lifeline Service Program. (Approximately 85 recipient TSPs and \$1 million per month.) PUCT Sub. R. 26.412. The TUSF administrator will receive information from each ETP related to its Lifeline programs. Each ETP will file an initial report with the administrator indicating that its Lifeline program meets the requirements of this rule. Each ETP will report the total number of qualified low-income consumers provided Lifeline service each month. Lifeline Support is broken down in 4 categories: Total Service Resale (TSR), Non-Total Service Resale (Non-TSR, Lifeline), Lifeline Service Agreement (LSA) and Small Rural Lifeline. The administrator is responsible for disbursing support payments to eligible ETPs;
- G. Telecommunications Relay Service (TRS) (1 recipient and approximately \$400,000 per month), PUCT Sub. R. 26.414. The TUSF administrator will make disbursements to the Relay Texas carrier at rates, terms, and conditions established in the PUCT's contract with the carrier. The administrator will receive PUCT approval of monthly claims for reimbursement by the carrier;
- H. Specialized Telecommunications Assistance Program (STAP) (Approximately 400 recipients and \$500,000 per month), PUCT Sub. R. 26.415. The TUSF administrator will make disbursements to STAP vendors as processed and approved by the PUCT;
- I. Audio Newspaper Assistance Program, (1 recipient and \$37,000 per month), The TUSF administrator will make a disbursement to the audio newspaper contractor as approved by the PUCT.
- J. Service to Uncertificated Areas, PURA §56.209.(2 recipients and \$14,000 a month)

Reporting Functions

The following is a listing of the reports the contractor will be required to provide with an explanation of each report. These reports are provided on a monthly basis unless otherwise noted. In addition to the reports listed below, the contractor will be required to provide ad hoc reports requested by the commission. PUCT is entitled, but not required, to verify all reports by reviewing (as applicable) bank statements, detailed general ledger accounts, cash flow statements and back up, reports from the collection agency, letters to aging accounts, data and activity month reports, RMT forms, or any other information available. To facilitate this, all RMT forms will be processed in the month they are received.

Monthly Reports

- A. Statement of Fund Performance** – Reports information processed by the TUSF Administrator for an activity month by category. The report includes revenues, assessments for current period, and disbursements listed by category as reported on the Form RMT-1 and Form RMT-2 worksheets. Information on fund disbursements for an additional 10 categories that are paid directly to agencies is also listed. In addition, fund balance tracking is provided on the report.
- B. Aging** – Complete history of Accounts Receivable Aging by 30, 60, 90, 120, 150 and over 150 days.
- C. Collections Activity** – Reporting of any collection activities that have occurred that month through the collection agency.

- D. **Bank Reconciliation** – Includes a schedule of Investments including Annualized Yield, Detailed general ledger transactions from contractor database by account, bank statements, and Outstanding Check list.
- E. **Cash Flow** – Breakdown of Cash Analysis for fiscal year by month. This report includes actual cash activity for receipts from contributors, payments by support program, cash from investments by market and the ending cash and cash equivalents.
- F. **Cash Flow** with backup – A detailed summary of each category that is listed on the cash flow. Each category listed is broken down by tab and lists the company contributing or receiving funds.
- G. **Data Month and Activity month files** – Reports highlighting every line item reported on the Form RMT-1 and RMT-2 worksheets submitted by telecommunication service providers by month; includes reports noting:
 - i. Total Taxable Telecommunications Receipts (Reported under Chapter 151 of the Texas Tax Code,
 - ii. Interstate Receipts,
 - iii. Intrastate Telecommunications Services Receipts reported by each telecommunication service provider,
 - iv. TUSF Assessments Payable by each telecommunication service provider,
 - v. High Cost Support Disbursements to eligible ETPs,
 - vi. FUSF High Cost Support,
 - vii. Small and Rural ILEC Support Disbursements to eligible ETPs,
 - viii. Small and Rural ILEC Support Eligible Lines,
 - ix. Small and Rural Lifeline Support,
 - x. Non-TSR Lifeline Support Disbursements to eligible ETPs ,
 - xi. Non-TSR Lifeline Counts ,
 - xii. Listing of ETP’s Purchasing Wholesale Lifeline Discounts, including amount,
 - xiii. TSR Lifeline Support Disbursements to eligible RETPs,
 - xiv. TSR Lifeline Support Counts ,
 - xv. TSR Lifeline Support Adjustment Amounts ,
 - xvi. Listing of ILEC’s Selling Wholesale Lifeline Discounts,
 - xvii. Lifeline Settlement Agreement Disbursements by Territory
 - a. Summary of total LSA Lifeline Support
 - b. Summary of total LSA Lifeline Counts
 - c. AT&T Territory –
 - 1. Total Count of Lifeline Customers Receiving Additional Lifeline and
 - 2. Total Disbursements,
 - d. Embarq Central Territory –
 - 1. Total Count of Lifeline Customers Receiving Additional Lifeline and
 - 2. Total Disbursements,
 - e. Embarq United Territory –
 - 1. Total Count of Lifeline Customers Receiving Additional Lifeline and
 - 2. Total Disbursements,
 - f. Verizon Territory –
 - 1. Total Count of Lifeline Customers Receiving Additional Lifeline and
 - 2. Total Disbursements,
 - g. Windstream SW Territory
 - 1. Total Count of Lifeline Customers Receiving Additional Lifeline and
 - 2. Total Disbursements,
 - h. Total of all Territories – Count of Lifeline Customers and Dollars, Tel-

Assistance Support count and amount, PURA amount, IntraLATA Amount Summary,

- xviii. IntraLATA Hospital Amount ,
- xix. IntraLATA School Amount ,
- xx. IntraLATA Telemedicine Amount ,
- xxi. IntraLATA Count Summary ,
- xxii. IntraLATA Hospital Count ,
- xxiii. IntraLATA School Count ,
- xxiv. IntraLATA Telemedicine Count ,
- xxv. High Cost Uncertified areas amount,
- xxvi. FUSF Loss Recovery ,
- xxvii. Additional Financial Assistance amount,
- xxviii. Total Support
- xxix. Net Remittance
- xxx. Lines for which ETP seeks support.

- H. **STAP Check Register** – Listing of monthly processed STAP payments processed by the TUSF Administrator by vendor and voucher number.
- I. **Disbursement Memo Copies for the Activity Month** – A PDF file to include all disbursements made to agencies for the Activity Month.
- J. **GL Trial Balance**
- K. **Payment Register** – An excel spreadsheet for all disbursements that were made out of the fund for the activity month broken down by category (Support Payment, STAP Payment, Agency Payment, Refunds and Total Payment).
- L. **Disbursement Reconciliation Report of Support** – Comparison of Cash Flow and Activity Month Support Disbursements used to ensure reports reconcile.
- M. **Texas USF Interest Breakdown** – Running report of interest income broken down by investment type and amount per month.
- N. **Statement letters** –PDF file of Statements mailed to providers for outstanding or credit balances.

Quarterly Reports:

- A. **Delinquent Filers** – Listing of all participants that have not reported Form RMT-1 or RMT-2 worksheets to the TUSF Administrator. Report lists Company ID, Name and Address, Carrier Type, Last Reported date, and Delinquent months not reported.
- B. **Transparency Reports** – Quarterly listing of all cash flow information for the quarter as required for PUCT Project Number 39939

Tasks

Annual Support Verification – Provide Annual Support form to carriers that receive High Cost and Small and Rural Support to attest that they are still entitled to the support they are receiving.

Database Scrubs:

- Compare PUCT database to TUSF Administrators database to assure that everyone who is required to report TUSF is doing so. Follow up to resolve any open carriers
- Compare FCC database to TUSF Administrators database to assure that everyone who is required.

Follow up to resolve any open carriers.

Annual IntraLATA verification by circuit. Carriers to provide contact name, email and phone to verify that the circuits are still running.

Contractor Requirements

All Reports and Invoices are due to the PUCT by the 25th of the preceding month for which they are incurred. Late reports and/or Invoices will incur an initial late penalty of \$5,000 and \$1,000 a day thereafter. Reports or Invoices corrected after the due date are considered late and the penalty assessment will then be in place.

Entities that are due money based on their RMT form submitted by the 25th of the month must be paid by the 10th of the following month. If the 10th falls on a weekend the first business day before the 10th is the payment deadline. Failure to meet that deadline will result in a \$25,000 penalty to the contractor plus \$1,000 a day thereafter.

Contractor is required to have an on-line system for entities to submit their RMT forms. The PUCT must have access to that system and have the ability perform research and run reports.

Contractor is required to pay all invoices presented and approved by the PUCT within 10 days. Failure to meet this will result in a \$10,000 penalty to the contractor plus \$1,000 a day thereafter.

Contractor is responsible for setting up a bank account separate from any other account for the sole purpose of administering the TUSF.

Contractor is required to have a current \$2,000,000 letter of credit or irrevocable letter of credit on file with the PUCT for the duration of the contract.

Contractor must submit an investment policy to be approved by the PUCT.

Security Policy

Contractor shall provide notice to PUCT's Project Manager and PUCT's Information Security Officer as soon as possible following contractor's discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of sensitive or confidential information ("Security Incident").

Within twenty-four (24) hours of the discovery or reasonable belief of a Security Incident, contractor shall provide a written report to PUCT's Information Security Officer detailing the circumstances of the incident and actions taken. Contractor shall comply with agency policies regarding building access and physical security as appropriate. Contractor shall comply with agency's Computer Services Security Policies as appropriate. The selected contractor shall be provided with such policies after the award has been made. The selected contractor shall conform to the State of Texas Security policies and procedures for handling data.

Contractor acknowledges that no personally identifiable or private information collected will be used, sold or shared by the contractor for any purpose other than the intended purpose.

In the event of a security breach where names, mailing addresses, birthdates, social security numbers, credit card information and driver's license data are disclosed, contractor will be responsible for notifying anyone affected by such a security breach. Failure to comply with security standards may lead to the suspension or termination of this contract.

ATTACHMENT B
SAMPLE CONTRACT TERMS

Article 1. DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1 “Public Utility Commission,” “PUCT,” or “Commission” means the Public Utility Commission of Texas acting through its Executive Director and the agency’s designated Contract Administrator.

1.2 “Contractor” includes **NAME**, and any successors, heirs, and assigns.

1.3 “Services” means any and all services performed and any and all goods and products delivered by Contractor as specified in Attachment A.

Article 2. COMPENSATION

2.1 Compensation. Contractor agrees to provide all services (including labor, expenses, and any other services) described in Attachment A as follows: **[insert summary of payment terms]**. Contractor understands that the PUCT is not responsible for payment of any costs or expenses exceeding this amount.

If Contractor believes that changes in the scope of services to be performed will require Contractor to increase its fee, it must request the PUCT’s written authorization to increase its fee. The Contractor must document the changes in the scope of services and why they will require additional effort. The PUCT must approve the increase in fee by written amendment to this Agreement before the Contractor performs any services or may invoice the increased fee.

2.2 Payment Process. Contractor shall submit a monthly statement for services or invoice to the PUCT Contract Administrator no later than the 15th day of the month after the month that the services were performed. The invoice must contain the name of the person performing services and a brief description of work performed. No payment will be made for administrative overhead, overtime, etc.

On the statement or invoice, Contractor must include a statement that the invoice accurately describes the services performed and the services were performed in compliance with the Agreement. The statement or invoice must include the vendor identification number issued by the Texas Comptroller or Contractor’s federal taxpayer identification number, a description of the services provided, and the name and division of the PUCT Contract Administrator.

Contractor shall submit the statement or invoice to the PUCT as follows:

By email to: Payables@puc.texas.gov

Or by mail to: Accounts Payable
Public Utility Commission of Texas
P.O. Box 13326
Austin, TX 78711-3326

2.3 Payment for Services. Contractor’s acceptance of payment releases the PUCT of all claims for compensation owed in connection with this Agreement.

2.4 Payments made to Subcontractors. Contractor shall pay any subcontractor hereunder the appropriate share of payments received not later than the 10th day after the date Contractor receives the payment. The subcontractor’s payment shall be overdue on the 11th day after the date Contractor receives the payment. The PUCT must approve Contractor’s use of any subcontractor before Contractor engages the subcontractor (see Sec. 5.1).

2.5 Records. Contractor and its subcontractors, if any, shall maintain records and books of account relating to services provided under this Agreement. Contractor shall, for a period of four (4) years following the expiration or termination of this Agreement, maintain its records (electronic and paper) of the work performed under this Agreement. Records include, but are not limited to correspondence concerning the subject of this Agreement between Contractor and the PUCT; Contractor's internal correspondence; and correspondence between Contractor and any third party. Contractor shall make all records that support the performance of services and payment available to PUCT and/or its designees or the State Auditor during normal business hours given reasonable notice, upon the request of the PUCT Contract Administrator.

2.6 Sole Compensation. Payments under this Article are Contractor's sole compensation under this Agreement. Contractor shall not incur expenses with the expectation that the PUCT or any other agency of the state of Texas will directly pay the expense to a third-party vendor irrespective of the reason for incurring those expenses.

Article 3. CONTRACT ADMINISTRATION

3.1 PUCT Contract Administration. The PUCT designates **Jay Stone** to serve as its primary point of contact and Contract Administrator throughout the term of this Agreement. Contractor acknowledges that the PUCT Contract Administrator does not have any authority to amend this Agreement on behalf of the PUCT, except as expressly provided herein. Contractor further acknowledges that such authority is exclusively held by the Commission or its authorized designee, Executive Director Brian H. Lloyd.

3.2 Contractor Contract Administration. Contractor designates its Contract Administrator as follows: **[Insert Designee(s) Here]**

3.3 Reporting. Contractor shall report directly to the PUCT Contract Administrator and shall perform all activities in accordance with reasonable instructions, directions, requests, rules, and regulations issued during the term of this Agreement as conveyed to Contractor by the PUCT Contract Administrator.

3.4 Cooperation. The Parties' Contract Administrators shall handle all communications between them in a timely and cooperative manner. The Parties shall timely notify each other by email or other written communication of any change in designee or contact information.

3.5 Inquiries and Prompt Referral. Contractor understands that the PUCT does not endorse any vendor, commodity, or service. Contractor, its employees, representatives, other agents, or subcontractors may not issue any media release, advertisement, publication, or public pronouncement which pertains to this Agreement or the services or project to which this Agreement relates or which mentions the PUCT without the prior approval of the PUCT. Contractor will promptly refer all inquiries regarding this Agreement received from state legislators, other public officials, the media, or non-Parties to the PUCT Contract Administrator.

Article 4. REPORTS AND RECORDS

4.1 Written Reports. Contractor will provide written reports to the PUCT in the form and with the frequency specified in Attachment A or as agreed to between the parties.

4.2 Distribution of Consultant Reports. PUCT shall have the right to distribute any consultant report associated with this contract, or to allow another Texas state agency or the Texas legislature to distribute it. PUCT shall also have the right to post any consultant report associated with this contract to the PUCT's website or to the website of a standing committee of the legislature. This provision does not waive any right to confidentiality that PUCT may assert for the report.

Article 5. SUBCONTRACTING PARTIES

5.1 Use of Subcontractors. The Parties acknowledge and agree that at the time of execution of this Agreement, Contractor intends to perform the Services required under this Agreement using its own

employees [or intends to perform the Services required under this Agreement using the following subcontractors:]. Contractor will notify the PUCT Contract Administrator of any other proposed subcontract and will work with the PUCT HUB Coordinator to procure such other subcontractor and to submit appropriate subcontractor selection documentation for approval prior to engaging any other subcontractor, such approval not to be unreasonably withheld. Any such other subcontract or subsequent substitution of a subcontractor must be approved according to the terms of Article 7.

5.2 Sole Responsibility. Contractor is solely responsible for the quality and timeliness of the work produced by all subcontractors that Contractor may engage to provide Services hereunder and for the timely payment for all such work produced by all subcontractors that the PUCT accepts and pays for in accordance with the terms of this Agreement.

5.3 Prime Vendor Contract. The Parties expressly agree that this Agreement is intended to constitute a prime vendor contract, with Contractor serving as the prime vendor for delivery of the Services made the subject hereof. Contractor acknowledges and agrees that it is fully liable and responsible for timely, complete delivery of the Services described in this Agreement, notwithstanding the engagement of any subcontractor to perform an obligation under this Agreement.

Article 6. TERM, SUSPENSION, AND TERMINATION

6.1 Term. The term of this Agreement shall begin on [June 1, 2015 or September 1, 2015 - depending upon contractor chosen] and shall continue in effect until August 31, 2019 unless sooner terminated under Sections 6.2 or 6.3 of this Agreement.

6.2 Options for Renewal. This Agreement does not provide for any extension options.

6.3 Termination for Cause by the PUCT. If Contractor is in default of any material term of this Agreement, the PUCT may serve upon Contractor written notice requiring Contractor to cure such default. Unless within thirty (30) days after receipt of said notice by Contractor, said default is corrected or arrangements satisfactory to the PUCT, as applicable, for correcting the default have been made by Contractor, the PUCT may terminate this Agreement for default and shall have all rights and remedies provided by law and under this Agreement. If PUCT terminates Contractor under Article 18.12, PUCT need not provide any notice or opportunity for curing the default.

6.4 Termination for the Convenience of the PUCT. The PUCT may, upon thirty (30) days written notice to Contractor, terminate this Agreement whenever the interests of the PUCT so require. The PUCT will only reimburse those expenses already incurred at the time the notice is provided. The PUCT shall not be liable for any damages and/or loss to Contractor as a result of termination for convenience.

6.5. Transfer of Duties. In the event of termination, Contractor will provide reasonable cooperation to transfer its duties under the Agreement to another entity without disruption to the administration of the TUSF.

6.6 Survival. In the event that this Agreement expires or is terminated pursuant to its terms, the rights and obligations of the Parties under it shall end; provided that the provisions of Sections 2.5, 2.6, 3.5, 4.2, 6.5, 7.5, 9.2, 9.4 through 9.6, 17.2 and 19.1 through 19.4, 19.6, 19.8, and Articles 1, 10, 11, 12, 14, 15, 16, 20, 21, 23, 28, and 29 shall survive in their entirety.

Article 7. ASSIGNMENT, AMENDMENTS, AND MODIFICATIONS

7.1 Material Change Requests. PUCT may propose changes to Attachment A. Upon receipt of a written request from the PUCT for a change to Attachment A, Contractor shall, within a reasonable time thereafter, submit to the PUCT a detailed written estimate of any proposed price and schedule adjustment(s) to this Agreement. No changes to Attachment A will occur without the Parties' written consent as provided in accordance with the terms stated in this Agreement.

7.2 Changes in Law, Rules, or Rulings. Subsequent changes in federal or state legislation, rules and regulations or rulings by the PUCT may require modification of the terms of this Agreement, including an increase or decrease in Contractor's duties or compensation. In the event of such subsequent changes to statutes, rules, and/or regulations, the PUCT and Contractor shall negotiate the terms of a contract modification in good faith and incorporate such modification into this Agreement by written amendment.

7.3 No Assignment of Duties. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of any Party (including by merger of Contractor or otherwise by operation of law); provided however that Contractor shall not otherwise, without the prior written consent of the PUCT, assign or transfer this Agreement or any obligation incurred under this Agreement. Any attempt by Contractor to assign or transfer this Agreement or any obligation incurred under this Agreement, in contravention of this paragraph, shall be void and of no force and effect.

7.4 Amendments and Modifications. This Agreement may not be amended or modified in any manner except by written instrument executed by authorized representatives of the Parties in accordance with the terms of this Agreement.

7.5 Binding on Successors. The terms of this Agreement shall be binding on any successor organization of any of the Parties.

Article 8. REPRESENTATIONS, WARRANTIES AND COVENANTS

8.1 Warranty of Performance. Contractor represents, warrants, and covenants that it will perform the services outlined in Attachment A in a professional and workmanlike manner, consistent with professional standards of practice in the professional industry.

8.2 Warranty of Services. Contractor warrants that the services shall be rendered by the qualified personnel named in Section 19.7 of this Agreement. If Services provided under this Agreement require a professional license, then Contractor represents, warrants, and covenants that the activity will be performed only by duly licensed personnel.

Article 9. RISK OF LOSS AND PROPERTY RIGHTS

9.1 Risk of Loss. The risk of loss for all items to be furnished hereunder shall remain with Contractor until the items are delivered to the PUCT, at which time the risk of loss shall pass to the PUCT.

9.2 Ownership. Except for materials where any intellectual property rights are vested in a third party, such as software or hardware, in which case such rights shall remain the property of the third party, all finished materials, conceptions, or products created and/or prepared for on behalf of the PUCT and purchased by the PUCT, or on behalf of the PUCT, that the PUCT has accepted as part of the performance of services hereunder, shall be the PUCT's property exclusively and will be given to the PUCT either at the PUCT's request during the term of the Agreement or upon termination or expiration of the Agreement. Notwithstanding the foregoing, materials created, prepared for, or purchased exclusively by the PUCT or on behalf of the PUCT are the PUCT's exclusive property regardless of whether delivery to the PUCT is effectuated during or upon termination or expiration of this Agreement.

9.3 Licensed Software. Contractor may obtain software licenses as an agent of the PUCT for software that is used by Contractor solely for the purpose of providing services under this Agreement. Contractor shall provide the PUCT with a copy of any software license obtained by Contractor as an agent for the PUCT for the purpose of providing services under this Agreement.

9.4 Prior Works. Except as provided herein, all previously owned materials, conceptions, or products shall remain the property of Contractor and nothing contained in this Agreement will be construed to require Contractor to transfer ownership of such materials to the PUCT.

9.5 Trademarks. The Parties agree that no rights to any trademark or service mark belonging to

another Party or to any non-Party are granted to any other Party by this Agreement, unless by separate written instrument. The PUCT acknowledges and agrees that use of any trademark associated with any software provided by Contractor under this Agreement does not give the PUCT any rights of ownership in the trademark or the software.

9.6 Program Information. Program information, data, and details relating to Contractor's services under this Agreement shall be maintained separately from Contractor's other activities. Contractor shall undertake all reasonable care and precaution in the handling and storing of this information.

9.7 Provision to be Inserted in Subcontracts. Contractor shall insert an article containing paragraphs 9.2 and 9.6 of this Agreement in all subcontracts hereunder except altered as necessary for proper identification of the contracting Parties and the PUCT under this Agreement.

Article 10. PUBLIC INFORMATION

10.1 Texas Public Information Act. (Texas Government Code Chapter 552). The Parties acknowledge that notwithstanding any other provisions of this Agreement, the Texas Public Information Act ("PIA") governs the treatment of all information held by or under the control of the Commission. The Commission will notify Contractor of requests for Contractor's information as provided under the PIA.

10.2 Agreement Not Confidential. The Parties acknowledge that not all terms of this Agreement may be confidential pursuant to the Texas Public Information Act, regardless of whether those terms are marked "Proprietary," "Trade Secret," or "Confidential." Contractor further acknowledges that in the event of a dispute over the release of a proposal or part of a proposal the PUCT is bound by the decision made by the Office of the Attorney General of Texas.

10.3 Contractor's Duty to Provide Public Information. Contractor is required, at no additional charge to the state, to make available in a format that is accessible by the public any information created or exchanged with the state pursuant to this contract. If information created or exchanged with the state pursuant to this contract is excepted from disclosure under the Texas Public Information Act, Contractor will not be required to make the information available to the public, but may be required to facilitate the PUCT's provision of the information to the Texas Attorney General for a decision on the information's confidentiality.

Article 11. CONFLICTS OF INTEREST AND EMPLOYMENT RESTRICTION

11.1 No Conflicting Relationships. Contractor certifies to the Commission that no existing or contemplated relationship exists between Contractor and the Commission that interferes with fair competition or is a conflict of interest, and that no existing or contemplated relationship exists between Contractor and another person or organization, whether or not located within the State of Texas, that constitutes or will constitute a conflict of interest for Contractor with respect to the Commission.

11.2 Prohibition on Transactions with Parties Adverse to Commission. Contractor agrees that during performance of this Agreement, it will neither provide contractual services nor enter into any agreement, oral or written, to provide services to a person or organization that is regulated or funded by the Commission or that has interests that are directly or indirectly adverse to those of the Commission. The Commission may waive this provision in writing if, in the Commission's sole judgment, such activities of the Contractor will not be adverse to the interests of the Commission.

11.3 Notice of Conflict. Contractor agrees to promptly notify the PUCT of any circumstance that may create a real or perceived conflict of interest, whether arising prior to or during the term of the contract. Contractor agrees to use its best efforts to resolve any real or perceived conflict of interest to the satisfaction of the PUCT. Contractor's failure to do so shall be grounds for termination of this contract for cause, pursuant to Section 6.3.

Article 12. INDEMNIFICATION

Contractor shall indemnify, defend and hold harmless the PUCT, the State of Texas, and its officers, agents, employees, representatives, contractors, assignees, and designees from any and all liabilities, claims, demands or causes of action, and all related costs, attorney fees and expenses of whatever kind or nature asserted by a third party and occurring in any way incident to, arising out of, or in connection with acts or omissions of Contractor, its agents, employees and subcontractors, committed in the conduct of this Agreement. Any defense shall be coordinated by contractor with the Office of the Attorney General when Texas State Agencies are named defendants in any lawsuit. Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. Contractor and the PUCT agree to furnish timely written notice to each other of any such claim.

Article 13. INSURANCE

Contractor agrees to comply with all state and federal laws applicable to the liability and payment of Contractor and Contractor's employees, including laws regarding wages, taxes, insurances, and workers' compensation. Neither the PUCT nor the State of Texas shall be liable to the Contractor, its employees, agents, or others for the provision of unemployment insurance and/or workers' compensation or any benefit available to a state employee.

13.1 Minimum Insurance. Contractor shall, at its sole cost and expense, secure and maintain as a minimum, from the Effective Date and thereafter during the term of this Agreement, for its own protection and the protection of the PUCT:

(a) commercial liability insurance, covering, at a minimum, the following categories of liability within the following limits: (i) bodily injury and property damage - \$1,000,000 limit per occurrence, \$2,000,000 aggregate, (ii) medical expense - \$5,000 limit per person, (iii) personal injury and advertising liability - \$1,000,000 limit, (iv) products/completed operations – \$2,000,000 aggregate, (v) damage to premises rented - \$50,000 limit;

(b) automobile liability coverage for vehicles driven by Contractor's employees (\$500,000 per occurrence); and

(c) workers' compensation insurance in accordance with the statutory limits, as follows: (i) employer's liability - \$1,000,000 each incident, (ii) disease - \$1,000,000 each employee and \$1,000,000 policy limit.

The PUCT shall be named an additional insured on the commercial liability and automobile policies.

13.2 Certificates of Insurance. Contractor shall furnish to the PUCT certificates of insurance, signed by authorized representatives of the surety or insurers, of all such bonds and insurance and confirming the amounts of such coverage within ten (10) days of the Effective Date of this Agreement, and upon request thereafter. Contractor shall provide the PUCT Contract Administrator with timely renewal certificates as the coverage renews. Failure to maintain such insurance coverage specified herein, or to provide such certificates promptly, shall constitute a material breach of this Agreement. Contractor shall provide thirty (30) days written notice of any notice for renewal and/or cancellation of insurance.

Article 14. DISPUTE RESOLUTION

The Parties agree to resolve disputes arising under this Agreement through the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and Subchapter C of the PUCT Rules for Administrative Services.

Article 15. SOVEREIGN IMMUNITY

The State of Texas and the PUCT do not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them under the laws of the State of Texas or the common law.

Article 16. GOVERNING LAW

Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into in the State of Texas and shall be governed by, construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. The Parties consent to the exclusive jurisdiction of the State of Texas. The Parties hereby submit to the jurisdiction of the courts located in, and venue is hereby stipulated to, the state courts located in Travis County, Texas. Each Party stipulates that it is subject to the jurisdiction of the courts located in Travis County, Texas, for any cause of action arising from any act or omission in the performance of this Agreement. Further, each Party hereby waives any right to assert any defense to jurisdiction being held by the courts located in Travis County, Texas, for any cause of action arising from any act or omission in the performance of this Agreement.

Article 17. COMPLIANCE WITH LAW

17.1 General. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, and rules applicable at the time of performance. Contractor warrants that all services sold hereunder shall have been produced, sold, delivered, and furnished in strict compliance with all applicable laws and regulations to which they are subject, including Equal Employment Opportunity laws. All laws and regulations required in agreements of this character are hereby incorporated by this reference.

17.2 Taxes. Contractor agrees to comply with any and all applicable state tax laws that may require any filing with and/or payment to the State of Texas as a result of any action taken as a result of this Agreement.

17.3 Workers' Compensation. Contractor agrees that it shall be in compliance with applicable state workers' compensation laws throughout the term of this Agreement.

17.4 Employee Eligibility. Contractor agrees to utilize the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of: 1) all persons employed during the contract term to perform duties within Texas; and 2) all persons (including subcontractors) assigned by the contractor to perform work pursuant to the contract.

17.5 Conflicts. Contractor agrees to abide by the requirements of and policy directions provided by the Texas statutes and the rules and regulations of the PUCT, and will inform and consult with the PUCT when further interpretations or directions are needed in order to fully implement the rules and regulations of the Commission. In the event that Contractor becomes aware of inconsistencies between this Agreement and a Texas statute or PUCT rule, Contractor will so advise the PUCT and will cooperate fully to revise applicable provisions of this Agreement as necessary.

Article 18. CONTRACTOR'S CERTIFICATION

By accepting the terms of this Agreement, Contractor certifies that, to the extent applicable, it is in compliance with the following requirements and prohibitions. Contractor understands and agrees that a false certification may lead to termination of this Agreement for cause.

18.1 Prohibitions on Gifts. Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Agreement.

18.2 Delinquent Obligations. Contractor is not currently delinquent in the payment of any franchise or sales tax owed to the State of Texas, and is not delinquent in the payment of any child support obligations under applicable state law.

18.3 Terrorist Financing. The PUCT is federally mandated to adhere to the directions provided in the President’s Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it, via cross referencing respondents/vendors with the Federal General Services Administration’s System for Award Management (SAM), <https://www.sam.gov/>, which is inclusive of the United States Treasury’s Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

<http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Respondent is not listed on the federal government’s terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at: <https://www.sam.gov/>

18.4 Antitrust. Neither Contractor nor anyone acting for Contractor has violated the antitrust laws of this State, codified in Section 15.01, et seq. of the Texas Business and Commerce Code or the Federal Antitrust Laws, nor has communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage.

18.5 Family Code. Contractor has no principal who is ineligible to receive funds under Texas Family Code Section 231.006 and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

18.6 Prohibited Compensation. Contractor has not received compensation from the PUCT, or any agent, employee, or person acting on the PUCT’s behalf for participation in the preparation of this Agreement.

18.7 Government Code. Under Texas Government Code Section 2155.004, Contractor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.

18.8 Outstanding Obligations. Payments due under the contract will be applied towards any debt that is owed to the State of Texas, including but not limited to delinquent taxes and child support.

18.9 Contracting with Executive Head of State Agency. Contractor certifies this Agreement is in compliance with Texas Government Code Section 669.003 relating to contracting with the executive head of a State agency. If Texas Government Code Section 669.003 applies, bidder will complete the following information in order for the bid to be evaluated: Name of Former Executive; Name of State Agency; Date of Separation from State Agency; Position with Bidder; and Date of Employment with Bidder.

18.10 Buy Texas. Contractor will comply with Texas Government Code Section 2155.4441, pertaining to service contracts regarding the use of products produced in the State of Texas.

18.11 Hurricane Recovery. Under Texas Government Code Section 2155.006, Contractor certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

18.12 E-Verify. Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security’s E-Verify system to determine the eligibility of:

1. All persons employed to perform duties within Texas, during the term of the Contract; and

2. All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the Contract, within the United States of America.

The Contractor shall provide, upon request of PUCT, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated Contract.

Article 19. GENERAL PROVISIONS

19.1 Relationship of Parties. Contractor is and shall remain at all times an independent contractor, and nothing in this Agreement shall be deemed to create a joint venture, partnership, employment, franchise, master-servant, or agency relationship between the Parties. Except as expressly provided to the contrary elsewhere in this Agreement, no Party has any right or authority to act on behalf of another Party, nor to assume or create any obligation, liability or responsibility on behalf of another Party. Under no circumstances shall the relationship of employer and employee be deemed to arise between the PUCT and Contractor's personnel. Contractor shall be solely responsible for achieving the results contemplated by this Agreement, whether performed by Contractor, its agents, employees or subcontractors.

19.2 Taxes and Statutory Withholdings. Contractor acknowledges that it is not a PUCT employee, but is an independent contractor. Accordingly, it is Contractor's sole obligation to report as income all compensation received by Contractor under the terms of this Agreement. Contractor is solely responsible for all taxes (federal, state, or local), withholdings, social security, unemployment, Medicare, Workers' Compensation insurance, and other similar statutory obligations (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Contractor under this contract. Contractor shall defend, indemnify and hold the PUCT harmless to the extent of any obligation imposed by law on the PUCT to pay any tax (federal, state, or local), withholding, social security, unemployment, Medicare, Workers' Compensation insurance, or other similar statutory obligation (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Contractor under this Agreement. Further, Contractor understands that neither it nor any of its individual employees is eligible for any PUCT employee benefit, including but not limited to holiday, vacation, sick pay, withholding taxes (federal, state, local), social security, Medicare, unemployment or disability insurance, Workers' Compensation, health and welfare benefits, profit sharing, 401(k) or any employee stock option or stock purchase plans. Contractor hereby waives any and all rights to any such PUCT employment benefit.

19.3 Notice. Except as otherwise stated in this Agreement, all notices provided for in this Agreement shall be (a) in writing, (b) addressed to a Party at the address set forth below (or as expressly designated by such Party in a subsequent effective written notice referring specifically to this Agreement), (c) sent by FedEx, with proper postage affixed and (d) deemed effective upon the third business day after deposit of the notice in the U.S. Mail.

IF TO THE PUCT:

ATTENTION: Brian H. Lloyd, Executive Director
1701 N. Congress Ave., 7th Floor
Austin, TX 78701

With copies to the PUCT Contract Administrator, and Erica Duque, CTPM, CTCM, at the same address.

IF TO CONTRACTOR:

ATTENTION:
ADDRESS
CITY, STATE, ZIP CODE

19.4 Headings. Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the Parties' intentions with respect thereto.

19.5 Export Laws. Contractor represents, warrants, agrees and certifies that it (a) shall comply with the United States Foreign Corrupt Practices Act (regarding, among other things, payments to government officials) and all export laws and rules and regulations of the United States Department of Commerce or other United States or foreign agency or authority and (b) shall not knowingly permit any non-Party to directly or indirectly, import, export, re-export, or transship any intellectual property or any third Party materials accessed by Contractor during the course of this Agreement in violation of any such laws, rules or regulations.

19.6 Preprinted Forms. The use of preprinted forms, such as purchase orders or acknowledgments, in connection with this Agreement is for convenience only and all preprinted terms and conditions stated thereon are void and of no effect. The terms of this Agreement cannot be amended, modified, or altered by any conflicting terms, provisions, or conditions contained in a proposal or a preprinted form, such as purchase orders or acknowledgements. If any conflict exists between this Agreement and any terms and conditions on a proposal, purchase order, acknowledgment, or other preprinted form, the terms and conditions of this Agreement will govern.

19.7 Specific Personnel. Contractor has identified the personnel for this assignment ("Team"), as follows: **[list]**

Contractor warrants that it shall use its best efforts to avoid any changes to the Team during the course of this Agreement. Should personnel changes occur during the contract period, Contractor will recommend to the PUCT personnel with comparable experience and required qualifications and training. The PUCT must approve any change in personnel on this project in writing. Contractor shall provide individuals qualified to perform the tasks assigned to such individual. At the PUCT's request, Contractor shall remove from the project any individual whom the PUCT finds unacceptable. Contractor shall replace such individual with another individual satisfactory to the PUCT as soon as practicable.

19.8 Publicity. Contractor understands and agrees that no public disclosures or news releases pertaining to this Agreement or any results or findings based on information provided, created, or obtained to fulfill the requirements of this agreement shall be made without the prior written approval of the PUCT.

Article 20. NO IMPLIED WAIVER

The failure of any party, at any time, to enforce a provision of this contract will not constitute a waiver of that provision; will not affect the validity of this contract or any part of it; and will not affect the right of any party to enforce each and every provision.

Article 21. ORDER OF PRECEDENCE

In the event of conflicts or inconsistencies between the provisions of this contract and its attachment(s), the provisions of this contract will control.

Article 22. FORCE MAJEURE

Neither the PUCT nor Contractor will be considered in default in the performance of its obligations under this contract to the extent that the performance of such obligations is prevented or delayed by any cause beyond the reasonable control of the affected party, which such party could not, by due diligence have avoided, including but not limited to acts of God, severe weather, explosions, riots, acts of war, or orders of legal authority. Such causes will not relieve either party of liability in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner, with all reasonable dispatch, and to give notice and full particulars of the same in writing to the other party as soon as possible after the occurrence of the cause that prevented or delayed performance of the obligations. If the event of Force Majeure continues for a period of more than one hundred and eighty (180) days, either party thereafter may terminate this contract upon giving at least ten (10) days prior written notice to the other party.

Article 23. SEVERABILITY

If any provision of this contract is held unlawful or otherwise unenforceable, such provision will be severed and deemed deleted and the remainder of this contract will continue in full force and effect, as if such provision had never existed.

Article 24. FUNDING OUT CLAUSE

This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruptions of current appropriations, provisions of the Termination Article shall apply. Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature. *See* Texas Constitution, Article III Section 49, State Debts; and Texas General Appropriations Act for the 2014-2015 Biennium, Article IX, Section 6.03, Excess Obligations Prohibited.

Article 25. DRUG FREE WORKPLACE POLICY

The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988, 41 U.S.C. § 8102, et seq., and 48 CFR § 52.223-6 Drug-Free Workplace) and maintain a drug-free work environment. The requirements of the Drug Free Workplace Act and the rules interpreting it are incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments that may hereafter be issued.

Article 26. SUBSTITUTIONS

Substitutions are not permitted without written approval of the PUCT.

Article 27. PAST PERFORMANCE

A Respondent's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of Texas Government Code Sections 2155.074, 2155.075, 2156.007, and 2157.125. Respondents may fail this selection criterion for any of the following conditions:

- 1) Having a score of less than 90% in the Vendor Performance System;
- 2) Being currently under a Corrective Action Plan through the Texas Comptroller of Public Accounts (CPA);
- 3) Having repeated negative Vendor Performance Reports for the same reason; or
- 4) Having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.).

Contractor performance information is located on the CPA web site at:
http://www.window.state.tx.us/procurement/prog/vendor_performance/.

CPA may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code § 20.108), CPA may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of CPA, and any negative findings, as determined by CPA, may result in non-award to the Respondent.

Article 28. RIGHT TO AUDIT

Pursuant to Section 2262.003 of the Texas Government Code, the State Auditor may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the state directly under this Agreement or indirectly through a subcontract under this contract. The acceptance of funds by Contractor or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Contractor or any other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract awards.

Article 29. ENTIRE AGREEMENT

This contract, including Attachment A, constitutes the entire agreement and understanding between the parties with regard to its subject matter and supersedes and merges all prior discussions, writings, negotiations, understandings, and agreements concerning the provision of these services. Any terms and conditions attached to a solicitation will not be considered unless specifically referred to in this Agreement.

In WITNESS WHEREOF both parties by their duly authorized representatives have executed this contract effective as of **[DATE]**.

The Public Utility Commission of Texas

Contractor

By:

By:

Brian H. Lloyd
Executive Director

Name
Title

Date Signed: _____

Date Signed: _____

ATTACHMENT C
HUB SUBCONTRACTING PLAN INFORMATION

In accordance with Texas Government Code Section 2161.252, the PUCT has determined that subcontracting opportunities are probable under this contract. Therefore, proposers, including State of Texas certified Historically Underutilized Businesses (HUBs), must complete and submit a State of Texas HUB Subcontracting Plan (HSP) with their solicitation response.

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Government Code Section 2161.252(b).

Proposers can find the HUB Subcontracting Plan forms and instructions for filling out the forms on the Comptroller of Public Accounts' website at

<http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>.

PUBLIC UTILITY COMMISSION OF TEXAS
RFP: 473-15-00317
TEXAS UNIVERSAL SERVICES FUND (TUSF)
ADDENDUM 1

The RFP is amended as follows:

7.1 Number and Appearance

Proposers shall submit one (1) clearly marked “Original” of their proposal response with original signature and five (5) copies of their proposal. Proposers shall also submit one (1) electronic copy of the complete RFP response on a compact disk or memory stick (flash drive) in Microsoft Word. **The compensation shall be included only in the original and electronic copy. No price information shall be included in any other portion of the response.** The five (5) copies of the proposal shall be identical except for omitting the price information.

1. **ATTACHMENT A – STATEMENT OF WORK**

Contractor Requirements

All Reports and Invoices are due to the PUCT by the 25th of the month following the month in which they are incurred.

Entities that are due money based on their RMT form submitted by the 25th of the month must be paid by the 10th of the following month. If the 10th falls on a weekend the first business day before the 10th is the payment deadline.

Contractor is required to have an on-line system for entities to submit their RMT forms. The PUCT must have access to that system and have the ability perform research and run reports.

Contractor is required to pay all invoices presented and approved by the PUCT and Texas Department of Assistive and Rehabilitative Services (DARS) administrative expenses within 10 days.

Contractor is responsible for setting up a bank account separate from any other account for the sole purpose of administering the TUSF.

Contractor is required to have a current \$2,000,000 letter of credit or irrevocable letter of credit on file with the PUCT for the duration of the contract.

Contractor must submit an investment policy to be approved by the PUCT.

Liquidated Damages

If contractor breaches this agreement by failing to meet deadlines, payments to the entities under the TUSF programs could comprise the entities anticipated cash flow. Damages to PUCT resulting from contractor’s failure to timely meet its obligations would be difficult to calculate at the time of breach, so this contract includes the following liquidated damages associated with the following deadlines:

- If contractor fails to provide a report or invoice by the deadline, contractor shall pay \$5,000 and \$1,000 a day thereafter in liquidated damages.. Reports or Invoices corrected after the due date are considered late and contractor will owe liquidated damages
- If contractor fails to pay an entities that is due money based on their RMT form submitted by the 25th of the month by the 10th of the following month or the first business day before the 10th if the 10th falls on a weekend, contractor shall pay \$25,000 plus \$1,000 a day thereafter in liquidated damages.

PUBLIC UTILITY COMMISSION OF TEXAS
RFP: 473-15-00317
TEXAS UNIVERSAL SERVICES FUND (TUSF)
ADDENDUM 1

- If contractor fails to pay an invoice presented and approved by the PUCT or an administrative expense of the Texas Department of Assistive and Rehabilitative Services by the 10th business day, contractor shall pay liquidated damages of \$10,000 plus \$1,000 a day thereafter.

Written questions and answers (in red):

1. Proposals shall include all required attachments and certifications. The PUCT will not accept attachments and certifications submitted after the deadline. Failure to provide all required information shall make the proposal non-responsive and thus disqualified from consideration.

What constitutes an attachment? For example, are the Audited Financial Statements considered an attachment? **Section 8 – Proposal Contents describes the required attachments. Yes, 8.5 Financial Capability would be an attachment.**

Are attachments included within the 75 pages? **Yes**

2. In order to allow bidders to more fully respond to the elements of the RFP that will be scored during evaluation, would the PUCT consider exempting certain components of the required response from the 75-page limit, such as the HUB Subcontracting Plan, required certifications, conflict of interest statement, and financial statements?

No we cannot exempt any components of the required response from the 75-page limit. All contents outlined under Section 8 are required to be included with proposal.

3. RFP Section 8.5 allows for a performance bond or letter of credit RFP, but Attachment A refers to a letter of credit only. Please confirm that a performance bond will be acceptable in lieu of a letter of credit.

Yes, a performance bond will be fine.

4. Please clarify what information is contemplated by RFP Attachment B, Section 10.3, Page 22..

The contractor chosen for the TUSF Administration contract would be required to make “public information” available to enable PUCT to respond to requests under the Public Information Act, Texas Government Code Chapter 552. Under that statute, public information is defined as:

“[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - a) owns the information;
 - b) has a right of access to the information; or
 - c) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body that is in the officer’s or employee’s official capacity and the information pertains to the official business of the governmental body.”

Texas Government Code § 552.002(a).

Further “[i]nformation is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the

PUBLIC UTILITY COMMISSION OF TEXAS
RFP: 473-15-00317
TEXAS UNIVERSAL SERVICES FUND (TUSF)
ADDENDUM 1

governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body." Texas Government Code § 552.002(a-1).

Finally, if information is public, it is public regardless of the format in which it is created or stored. See Texas Government Code § 552.002(a-2) through (c).

5. Would the PUCT consider an extension until April 27, 2015?

No we are unable to consider extending the RFP opening date.

6. If Xerox is bids on or is awarded this opportunity, will Xerox be precluded from bidding on the Low Income Discount Administrator (LIDA) RFP? No

7. Our approach would be to structure a contract with the PUCT for each of the following, for regulatory reasons: 1) a Xerox subsidiary that is licensed for investment advisory services and 2) Xerox State & Local Solutions, Inc. for all other services. Would this approach be acceptable?

Xerox is at liberty to propose as they wish. PUCT will consider all proposals that meet the requirements of the RFP.

8. As an alternative to providing investment advisory services, would the commission allow Xerox to provide the State a portfolio of pre-determined investment choices from which the state would direct Xerox to deposit or withdraw funds?

Xerox is at liberty to propose as they wish. PUCT will consider all proposals that meet the requirements of the RFP.

9. Of the 10 programs outlined in the RFP (pg. 13-14) please supply the following information:

From a safekeeping perspective, does each recipient/program require a segregated/separate account, or are all funds commingled?

The operational funds for disbursement are currently held in one account for all the programs.

You have supplied approximate recipient and dollar amounts of each Program. Are the dollar amounts stated average disbursement amounts, or average balances?

They are average disbursements.